

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

CONTRACT FOR INTERACTIVE VOICE RESPONSE (IVR)
AND WEB-BASED UTILITY CUSTOMER ACCOUNT SERVICES

This contract is made the _____ day of _____, 20____, by the City of Durham ("City") and KUBRA Data Transfer, Ltd. ("KUBRA" or "Contractor"), a corporation organized and existing under the laws of the state of New York.

Sec. 1. Background and Purpose. The City of Durham desires to offer an interactive voice response (IVR) system which would provide outgoing automated calls as well as acceptance of debit/credit card and e-check payments from utility customers and citizens over the phone. The City also intends to implement web-based electronic enhancements to the utility billing system, including but not limited to paperless billing, expanded web payment options, text and e-mail messaging to customers, and payment by mobile device.

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor's. The Contractor shall provide the Electronic Billing and Payments Services as set out in Exhibit A, entitled, "Scope of Work." In this contract, "Work" means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 3. Term. This Agreement shall be for an initial term (the "**Initial Term**") commencing on the date hereof and continuing for a period of thirty-six (36) consecutive months following the date of execution (the "**Acceptance Date**") of the Project Live Document in a form similar to the form attached hereto as Exhibit B, and shall automatically renew and extend for successive twelve (12) month terms (each a "**Renewal Term**"), commencing at the conclusion of the Initial Term or any Renewal Term, unless written notice of termination is given by either party to the other at least ninety (90) days prior to the end of the Initial Term or applicable Renewal Term. The Initial Term and all Renewal Terms shall collectively be referred to as the "**Term**".

Sec. 4. Termination for Cause. Either party hereto shall have the right to terminate this contract upon delivery of written notice to the other party in the event that such other party:

- (a) ceases to do business or otherwise terminates business operations;
- (b) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other; or
- (c) is in breach of any material representation, warranty, obligation or other provision of this Agreement and fails to fully cure such breach within thirty (30) days of receiving written notice of such breach from the terminating party.

Sec. 5. Termination Fee. In the event Contractor terminates this contract pursuant to Section 4.(c) due to City's non-payment, or City ceases to use the Services or otherwise terminates this contract other than in accordance with Section 3, City agrees to pay Contractor an early termination fee (the "**Termination Fee**") equalling the average of the three (3) (or fewer, if less than three full months have been completed) largest monthly invoices from Contractor to City multiplied by the number of months remaining in the Initial Term or then current Renewal Term, as applicable. City agrees that said Termination Fee shall be invoiced and governed by Section 10 of this contract. The Termination Fee shall be in addition to all other rights held by the Contractor at law, equity or under this contract. The Termination Fee is an estimate of the liquidated damages entitled to Contractor for the City's termination of this contract pursuant to this Section 5, and shall in no way be construed as a penalty for such termination.

Sec. 6 Exclusivity. During the entire Term of this Agreement, City shall solely and exclusively utilize the Contractor as its sole provider of the Work.

Sec. 7 City Responsible for Data. The City is solely responsible for the adequacy and accuracy of the City's data and the instructions, programs and procedures supplied by it. The City shall provide its own

audit controls, operating methods and checkpoints necessary to satisfy the City's requirements with respect to detection of machine errors, security and adequacy of the data provided by the City to Contractor and necessary to enable recommencement and recovery in the event of any malfunction. Contractor shall rely on the accuracy of all data and information provided to it by City.

Sec. 8 Incorrect Data. City shall promptly inform Contractor of any incorrect data or information. City shall bear the cost of any correction of data or information if such a correction results in additional costs to Contractor and such costs exceed those which are incurred in the process of routinely receiving and preparing correct data for normal usage. Such additional costs shall be billed on the City's monthly invoice for Services.

Sec. 9. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work. The Fees for the Services shall be in accordance with the Fees set out in Exhibit A.

Sec. 10. Contractor's Billings to City. Compensation. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: number of billable services provided by KUBRA as multiplied by appropriate charge in Exhibit A. The City will verify completion of all such charges as satisfactory to the City. If any charge is not considered satisfactorily completed, the City shall immediately contact the Contractor and specify any deficiencies and what the City's expectations are for remediation. Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice and any undisputed amounts that remain unpaid after thirty days will be considered a Delinquent Balance. A Delinquent Balance shall be payable with interest calculated at eighteen percent (18%) per annum (one and one-half percent (1.5%) per month or part thereof) from the date of the invoice until the date payment is received by Contractor. In the event of a Delinquent Balance, Contractor is entitled to cease providing the Services until such time as the Delinquent Balance and any interest accrued thereon is paid in full, and such a stoppage by Contractor shall not be considered a breach by Contractor under this Agreement.

Sec. 11. Prompt Payment to Subcontractors.

(a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled "Prompt Payment to Subcontractors," he or she will be referred to as the "Project Manager") determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be

(i) the amount of interest due to the Subcontractor under subsection (a), and/or

(ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled "Prompt Payment to Subcontractors") shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 12. Insurance. Contractor shall provide documentation of or ability to purchase and maintain insurance coverage for not less than the following:

Commercial General Liability, covering:

- Premises/operations
- Products/completed operations (two years minimum, from project completion)
- Broad form property damage
- Contractual liability
- Independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured.
- Combined single limit not less than \$1,000,000 per occurrence, with an annual aggregate on not less than \$2,000,000.

Commercial Auto Liability, covering:

- Symbol 1, all vehicles
- Combined single limit of \$1,000,000
- City of Durham must be named additional insured

Professional Liability or Errors and Omissions, covering:

- Covering claims arising out of professional advisement / consultation services performed in connection with this contract
- Self-insured retentions/deductibles in excess of \$25,000 must be approved by the City Finance Director
- Combined single limit not less than \$1,000,000 per occurrence;

Workers' Compensation Insurance, covering:

- Statutory benefits;
- Covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
- Employers' liability, \$1,000,000
- Waiver of subrogation in favor of the City of Durham

Fidelity/Crime Insurance

General Internet Crime Liability/Cyber – Liability
Covering claims associated with e-business and Internet

Insurance shall be provided by:

- Companies authorized to do business in the State of North Carolina
- Companies with Best rating of A-, VII or better.

Insurance shall be evidenced by a certificate:

- Providing notice to the City of not less than 10 days prior to cancellation or reduction of coverage
- Certificates shall be addressed to:
City of Durham, North Carolina
Attention: Martha Zeigler, Utility Finance Officer
101 City Hall Plaza
Durham, NC 27701

Sec.13. Performance of Work by City. If the Contractor materially fails to perform the Work in accordance with Exhibit A and any applicable Statement of Work and such failure is not the result of the actions or inactions of the City, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of

the City's rights and remedies. Before doing so, the City shall give the Contractor thirty (30) days advance notice of its intention and allow the Contractor to bring the work back into line with the requirements of Exhibit A and the applicable Statement of Work. The Contractor shall reimburse the City for any reasonable additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 14. Exhibits. The following exhibits are made a part of this contract:

Exhibit A Scope of Work, including Services and Fees containing 5 page(s).

Exhibit B Project Live Document containing 1 page.

Exhibit C Service Level Agreement containing 4 pages.

Exhibit D Memo on documentation regarding additional insured status containing 1 page.

Exhibit E Documentation of additional insured status containing 1 page.

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 15. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

Martha Zeigler

Department of Water Management

City of Durham

101 City Hall Plaza, Suite 1500

Durham, NC 27701-3329

The fax number is (919)560-4479.

Email: martha.zeigler@durhamnc.gov

To the Contractor:

Rick Watkin

President & CEO

KUBRA Data Transfer Ltd.

5050 Tomken Rd.

Mississauga, ON

L4W 5B1

The fax number is (905) 624-2886.

Email: Rick.Watkin@Kubra.com

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 16 Ownership of Information. Title and all ownership rights in and to the documentation describing or relating to the Services, including, but not limited to, any and all formats, computer programs, specifications and user guides (the "**Documentation**") shall remain at all times solely with Contractor and/or with the respective manufacturer or author of the Documentation. The Services and the Documentation are agreed to be the proprietary, confidential and trade secret information of Contractor and/or, in the case of Documentation, the respective manufacturer or author, whether or not any portion thereof is or may be validly copyrighted or patented. City shall have no right, title or interest in or to the Documentation, whether or not such Documentation has been developed specifically for performance of this Agreement. City shall have the right to make a reasonable number of copies of the Documentation for the sole purpose of accessing and utilizing the Services.

Sec 17 Indemnification of City. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of negligent acts or omissions of the Contractor

or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 18 Indemnification of Contractor. City agrees to defend, indemnify, and hold Contractor, its directors, officers, employees, agents, affiliates, suppliers and vendors harmless from all liabilities, claims and expenses, including without limitation reasonable attorneys' fees, arising from any breach by City of its representations, warranties, covenants or obligations under this Agreement.

Sec. 19. Limit of Liability. Contractor shall not be liable for any indirect, consequential, special, incidental, punitive or other damages of any kind or nature whatsoever, whether claimed by City or any other person, which arise out of the provision of the Services or City's use of or reliance on them, unless such damages are a result of the Contractor's gross negligence or wilful misconduct.

City acknowledges and agrees that Contractor's total liability to City, including any obligations to indemnify City in accordance with this Agreement, and the sum of all of City's remedies against Contractor will in all events not exceed, in the aggregate, the amount of Fees paid to Contractor under this Agreement for the three (3) month period preceding the occurrence in respect of which the claim arose.

Sec. 20 Confidentiality and Privacy. For the purposes of this Section, "**Confidential Information**" includes:

- (a) non-public financial information concerning either party;
- (b) information about either party's product line (both current and planned), research, development, customer data, and pricing and marketing plans, unless and until publicly announced;
- (c) customer's billing information;
- (d) any information designated as confidential in writing at or prior to disclosure; and
- (e) any information otherwise disclosed in a manner consistent with its confidential nature.

For the purposes of this Section, "**Confidential Information**" specifically excludes information that:

- (f) has become publicly known without breach of this Agreement or any other confidentiality obligation by the receiving party;
- (g) has been given to the receiving party by a third party with a legal right to so disclose;

- (h) was known to the receiving party at the time of disclosure as evidenced by its written records;
- (i) was independently developed by the receiving party; or
- (j) is required to be disclosed by applicable law.

Each party agrees to use good faith efforts, and at least the same care that it uses to protect its own Confidential Information of like importance, to prevent unauthorized dissemination or disclosure of the other party's Confidential Information both during and after the Term of this contract. In addition, each party shall use the other party's Confidential Information solely as necessary for the performance of this contract.

Sec 21. Force Majeure Except as otherwise expressly provided in this contract, neither Contractor nor City shall be responsible for delays or failures in performance resulting from acts beyond the reasonable control of either party. Such acts shall include but not be limited to acts of God, strikes, lock-outs, riots, acts of war, acts of terrorism, epidemics, governmental regulations imposed after the fact, fire, earthquakes, floods or other disasters. The dates and times for performance (other than for the payment of monies from City to Contractor payable under this contract) shall be postponed automatically to the extent and for the period of time that Contractor or City, as the case may be, is prevented from performing its obligations hereunder by reason of the above-mentioned causes.

Sec. 22 Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment, Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns. Notwithstanding anything else contained herein, Contractor shall have the right to assign this contract or any rights hereunder without the consent of City, in the event of a merger, sale of assets or business or other transfer of control by operation of law or otherwise, provided that the assignee shall assume all obligations and rights hereunder.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all

applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(j) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(k) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(l) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

Sec. 23 Termination for Convenience ("TFC"). (a) *Procedure*. Without limiting any party's right to terminate for breach, the parties agree that the City may subject to the payment of a Termination Fee as set out in section 5, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations*. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions, Termination Fee provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment*. The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts. Within 20 days after TFC, the City shall pay the Contractor a Termination Fee as set out in section 5 and shall pay the Contractor for all work performed except to the extent previously paid for.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

[This portion of page intentionally blank. See execution sections on next page.]

ATTEST:

Secretary
(SEAL)

By: _____
President

City of _____

ACKNOWLEDGMENT BY CORPORATION

Province of _____

I, a notary public in and for the aforesaid county and state, certify that Lida Sadrazodi personally appeared before me this day and stated that he or she is Chief Financial Officer of KUBRA Data Transfer Ltd., a corporation, and that by authority duly given and as the act of the corporation, the foregoing contract or agreement with the City of Durham was signed in its name by its President & CEO, whose name is Rick Watkin, sealed with its corporate seal, and attested by him/herself as its said Chief Financial Officer. This the _____ day of _____, 20_____.

My commission expires:

Notary Public

Exhibit A Services and Fees

ELECTRONIC BILL PRESENTMENT AND PAYMENT

Module Overview:

i-doxs Platform:

DoxsDirect™	[Data receipt, extraction/parsing, composition, indexing, release]
Virtual Repository™	[Document archival/retrieval, hosting, technical support, system infrastructure]
User Console™	[Customer management, document management, customer support]
Admin Console™	[System configuration, monitoring, user management, administration, reporting]

Functional Modules:

i-Direct™ Module	[Enrollment, presentment, account/process management, Push E-mail, Analytics]
i-Pay™ Module	[Electronic payment scheduling, warehousing, management and settlement]
i-Market™ Module	[On-site Targeted marketing and customer service messaging]
i-Message™ Module	[Interactive Outbound Messaging – Phone, E-mail, text]
i-Mobile™ Module	[SMS, Mobile Browser and Mobile Apps]

Upfront Fees include:

- Project Management
- Business Requirements Gathering
- Statement of Work Development
- Programming
- System Testing
- User Training

i-doxs Platform

Services include:

- Data receipt & routing - Receipt of your core data extract billing files in a flat file format from your billing system via Internet FTP or SFTP. After a series of validation, balance acknowledgement/reconciliation and quality control applications the data files are routed to the parsing and extraction engine.
- Data extraction & parsing - Data extraction and parsing tools split, parse and route the identified data fields into a relational database for further processing and eventual document composition. PDF/PNG presentment of source content via a Web browser.
- Composition & Presentment – Upon a request from an authorized internal user, data elements along with the associated document templates are mapped to PNG pages utilizing a robust set of APIs and presented to the Customer in the form of a dynamic web page.
- Storage & Hosting – Storage and archival of all documents loaded within our redundant and secure data centers. Support of up to 8 search criteria for internal access across each document catalog or type.
- Administration – Access to the Admin and User Consoles for enterprise tracking, management, and support tools.

Notes:

- Transactional fee is applied per image composed and stored within the cloud based repository. An image is defined as a one page regardless of print or electronic presentment (So a two paged document or one paged document printed with two impressions (both sides) would be 2 images for example).

i-Direct Module

Services include:

- Enrollment Processing – Support of a customized enrolment, validation, activation and de-activation program on a biller-direct site. KUBRA standard Single Sign On (SSO) support.
- Composition and Presentment - Validation, composition and dynamic rendition of legacy Bill data files into an interactive branded summary and detailed electronic formats allowing for the granular presentment, customer self-service, and online account management support applications upon request from the Customer.
- Summary register – supports an actionable summary register (sortable fields with bill date, amount due, account number, etc) with options to view, pay, download, and get current balance information with links to payment details, filed bills, profile information, and historical payments.
- Decision Support – Display of data in multiple formats with options for downloads and navigation on-demand
- Notification - e-mail notification/reminders of e-bills availability, forgotten passwords, and new enrollments
- Self-service – capture and routing of on-line customer inquires/issues
- User Interface Design – support of a customized User Interface with regards to framing, navigation, and all associated cosmetic elements

Notes:

- Viewed pricing metric is only levied towards bills viewed by outside Customers. Internal employees can access all bills an unlimited number of times with no presentment fees
- View pricing metric refers to bills that have been viewed by the Customer. Transaction fees are only applied once. Bill can be viewed an unlimited number of times
- Includes all noted functionality referenced in the service fee section outside of the advance features/modules
- View fee is applied irrelevant if the end customer is viewing on a mobile browser or a traditional desktop browser

i-Pay Module

Services include:

- Real-time payment enrollment and validation for ACH, credit card, debit card and ATM PIN-less Debit payment accounts
- The capture and construction of consolidated, recurring, one-time [Internet/IVR/CSR assisted], future and e-bill integrated payment instruction file creation and delivery.
- Warehousing of payment accounts, profiles, preferences, and payment transactional history
- Support of a payment scheduling interface [one-time, recurring variable, recurring fixed] and a payment profile and history interface with varying levels of detail.
- Delivery of the payment instruction files to the noted ACH originators and credit/debit card processors for settlement
- Capture and processing of the remittance advice from the processors for A/R posting and reconciliation
- Integrated reporting and management tools
- Warehousing and display of transactional payment history, forecasting data and payment profile information in the form of reports and online records.
- EFT engine supports the processing of payment files and warehousing of payment profiles along with management tools for new users.

Notes:

- No charge based on enrollments and we do not charge for email notifications
- Payment charges are applied per payment. KUBRA's service includes gateway processing fees and direct connections to ODFI's
- Credit card authorization, settlement and interchange fees are separate and applied directly by the acquirer. Note KUBRA can provide acquiring services and pricing.
- Return fees are applied to all returns (i.e. invalid account number, NSF, NOC, etc for ACH) and are levied directly by the ACH originator to the Biller
- The i-Pay Module supports a non-convenience fee or Biller-Fund payment model. Convenience fee pricing can be provided on request.
- EFT Application supports legacy EFT processing and support for existing and net new EFT customers
- Notification of Changed [NOC] processing is available based on your preferred financial institution [ODFI]
- The payment fee is applied irrelevant if the payment is made on the website, via e-mail, or a mobile device

i-Market Module

Includes:

- On-site marketing tools across e-inserts, pop-up ads, e-mails, on-site messaging, and banner ads
- No seat or user restrictions
- No transactional fees or monthly maintenance fees

i-Message Module

Services include:

- Campaign manager application for the setting up, management, and reporting on outbound campaigns
- Support for the receipt of pre-defined files for email with corresponding account information
- Support for building email templates for delivery
- E-mail deliverability services along with traditional/text time of day delivery preferences and re-delivery options
- Comprehensive reporting and monitoring tools

Adoption Marketing Services

We have developed a number of communication materials designed to drive consumer adoption to assist in the promotion of your new e-payment site. This program of materials consists of several different formats allowing you to choose the most effective communication method for your unique brand and objectives. They also include a variety of diverse, creative executions to choose from, offering you the flexibility to demographically target specific audience segments.

Adoption Marketing Tools

Our adoption marketing consultant will assist you in creating effective, proven programs that not only meet your objective to increase adoption but will also support your leadership role in environmental issues by encouraging electronic statements over paper. Creating marketing campaigns through the use of dynamic banner ads and email messages branded for each of your Companies is a standard feature within our product offering. This online tool also allows you to market to specific segments of each company's customer pool based upon certain criteria such as City, State, Zip Code, or account number grouping.

Training

KUBRA will provide full training to your staff through our unique "Train the Trainer" certified process. This training program is provided at your preferred location in a "Train the Trainer" format which is typically completed in one day. Training is scheduled in your KUBRA customized project plan, at a mutually agreed upon date prior to your anticipated Go Live date. The Content of the one day course is the end User / Customer web interface and the web based CSR / Admin interface consisting of Document Manager, Payment Manager, Report Manager, Release Manager and Notification Manager. A qualified instructor from KUBRA, with specific knowledge of your configuration, will travel to your location to perform the training.

Upfront Fees

Upfront Fee Summary		
i-Pay Module		\$10,000
i-Message Module		\$3,500
Integration with Munis platform (optional)		\$16,500

Upfront Fees include:

- Project Management
- Business Requirements Gathering
- Statement of Work Development
- Programming
- System Testing
- User Training
- Customer training – does not include trainer travel and lodging expense
- Successful integration between the IVR and Munis software

Transactional Fees

Module Overview:

i-Pay™ Module	[Electronic payment scheduling, warehousing, management and settlement]
i-Direct™ Module	[Enrollment, presentment, account/process management, Push E-mail, Analytics]
i-Message™ Module	[Interactive Outbound Messaging – Phone, E-mail, text]

i-Pay Module

Transactional Fee Summary	
IVR Payment	\$0.25
Web Payment	\$0.10
Fee Definitions	
IVR Payment	Applied per payment settled
Web Payment	Applied per payment settled

i-Message Module

Transactional Fee Summary	
Voice	\$0.05
SMS	\$0.05
Email*	\$0.02
Fee Definitions	
Voice	Applied per outbound Voice Call [not per minute]
SMS	Applied per SMS message
E-mail*	Applied per e-mail

*** Fees are not applicable to system generated emails such as Payment Confirmations, Declined Payment Notifications... which are free.**

Exhibit C

General:

PROVIDER shall provide reports of its performance against the Service Levels on a monthly basis. Service Levels shall be applicable 90 days after the Production-Ready Date.

Provider will use commercially reasonable efforts to provide the Services in accordance with the performance standards ("Service Levels") set forth in the Service Level Schedule. Performance at or above a Service Level shall constitute satisfactory performance by Provider. In the event that, at any time, a monthly Service Level report shows any material failure by Provider to meet any of the Service Levels, Provider shall: (i) within thirty (30) days after the date of delivery of such report, deliver to Client a remedial plan showing in reasonable specificity and detail (A) Provider's findings regarding the causes for such failure to meet Service Levels and (B) a remedial plan of actions reasonably designed to eliminate, prevent or reduce the future likelihood of recurrence of such causes; and (ii) diligently proceed to carry out such plan. Except for Client's right to terminate for material breach in accordance with Section XX hereof (in the event that repeated, frequent, or specific material failures by Provider to meet Service Levels constitute a material breach of this Agreement), the foregoing shall constitute the sole and complete remedy for Client with respect to the corresponding failures by Provider to meet Service Levels.

Timeliness of Implementation

The implementation time line starts from the date of contract signing (Effective Date) and is primarily based on the number of print streams to be parsed, the number of templates to be created, as well as the number of non-standard features required. Once the Client implementation documentation is completed, the number of print streams is known, and the number of bill templates is known, then PROVIDER can calculate how long the implementation will take. PROVIDER will present a draft project plan during the kick-off meeting and Client will then have the opportunity to determine if it will meet the time estimates PROVIDER has identified for the Client's tasks. Once both the Client and PROVIDER have agreed on the project plan, every effort on both parties part must be made to meet this time line. Potential delays must be identified at least as soon as known, so that both parties can make suitable adjustments to the time line.

If PROVIDER is the cause of the project's delay, PROVIDER will make every reasonable effort to resolve the issue (s), including applicable internal escalation procedures, in order to ensure that the issue(s) will be resolved and new completion times will be estimated.

If the Client is the cause of the project's delay, the Client will make every effort to resolve the issue (s). Failure to resolve the issue(s) in a timely manner (fifteen (15) business days), which causes PROVIDER assets to be idle, will result in the reassignment of said assets to other projects and the Client's project will be moved to the PROVIDER project queue to be rescheduled as soon as the above mentioned resources become available.

Management Reporting Frequency and Content

PROVIDER will supply daily, weekly and monthly reporting, as needed, to the Client accessible via the Admin Console. A complete list of all reports accessible via this application is available in the i-Direct product user guide.

Replacement Systems

In the event that any applicable system or function used by PROVIDER to provide a Service is replaced during the Term by a comparable system or function, the Service Level shall, to the extent reasonably practicable, be defined during the first sixty (60) days of operation of such replacement system or function, provided that such Service Level shall be established at a level intended to achieve performance at least the same as or better than performance under the Service Level associated with the replaced system or function.

Storage

Standard retention period for bill images is thirty (30) months and thirty (30) months for payment history. Historical bill images and payment history may be loaded into the Service at the election of Client; such election will be noted in the Services Fee Schedule, if applicable.

Purging of Client data, beyond the selected retention period described in the Services Fee Schedule, will be at the election of PROVIDER. Provider is not the system of record and the Client has the obligation to retain customer data on a permanent basis, or for any other Client need, and agrees that the loss or destruction of any such data will not result in any liability to PROVIDER.

Additional Storage

PROVIDER may provide storage services for Client Data beyond the standard period included in the Services, at the election of Client, which will be invoiced at the then-current Additional Storage Fee rate and described in the Services Fee Schedule.

Account Volume Growth

Batch windows and service levels are based on current account volumes as of the Commencement Date. Batch windows and service levels may be adjusted by PROVIDER in consultation with Client should account volumes exceed 20% growth in a given month.

Commitment to Data Security

PROVIDER will keep its security practices current by performing independent third party audits. Requests for audit results will be made through the Team Leader during the implementation process and to the assigned Project leader once the system is in full production.

Commitment to Continuous Application and Technology Upgrades

PROVIDER will upgrade systems and application technology regularly in order to provide the most efficient servicing for our Clients. Planned system upgrades will be reported to the Client via an e-mail notice. Upon giving reasonable advance notice to Client, PROVIDER at its expense may make any modifications, changes, adjustments or enhancements to the Services, which it considers being suitable or which are required by law or governmental regulation.

Documentation of Changes

Any additions or modifications to Service Levels shall be documented in a written amendment to the Agreement

Client Support:**Support Hours**

Post Production, PROVIDER will provide client support weekdays 8:00 am ET to 8:00 pm ET, excluding holidays. Client support required at another time will be based upon the severity of the problem. Contact will be made in accordance with the support defined below.

Telephone support services, available Monday to Friday 8:00 am ET to 8:00 pm ET excluding holidays, will include assistance related to routine questions regarding use of the i-doxs Suite system (i-doxs Suite), assistance in identifying and verifying the causes of suspected errors or malfunctions in the i-doxs Suite system, advice on detours for identified errors or malfunctions, where reasonably available and correction of reproducible errors of the i-doxs Suite system that cause the applicable i-doxs Suite system to deviate materially from the applicable documentation.

After Hours Support

PROVIDER will provide support outside of regular business hours as needed. Although your dedicated support team will be unavailable, general support will still be available for any Production related issue. With that in mind please attempt to make solution specific requests for changes during business hours and use after hours support for service interruptions and issues.

On-site Support

On-site services will be provided at the Client's reasonable request. PROVIDER shall charge Client for such on-site services at PROVIDER's then-current rates, plus reasonable travel costs and other out-of-pocket expenses directly incurred in performing such services, provided Client has agreed to pay for on-site services in advance. However, Client shall have no obligation to pay for services rendered as a result of a failure of the PROVIDER solution to satisfy the Service Level Agreement set forth herein, where PROVIDER determines in its sole discretion, that such services must be performed on-site at Clients premises.

Escalation Procedures

In order to properly track and monitor, all issues must be reported to PROVIDER Support via the dedicated 800 telephone number and / or to clientsupport@KUBRA.com Client may also elect to escalate an issue directly to your dedicated Client Relationship Manager.

Service Levels:**System Availability**

PROVIDER shall make access available to the Services twenty-four hours per day, seven days per week, less (a) scheduled maintenance; and (b) excusable downtime resulting from events beyond PROVIDER's reasonable control (the "Availability Period"). PROVIDER will conduct proactive monitoring of all servers, including monitoring disk space, CPU utilization, memory utilization and critical error messages. PROVIDER will take commercially reasonable efforts to notify Client in advance of any potential server outages or equipment failures that would prevent Client from using the Services. PROVIDER will provide support 24 hours per day, 7 days per week, to all servers. PROVIDER will maintain at least 99.9 percent (99.9%) server availability during the Availability Period, which availability shall be measured monthly and based on a system-wide average. Events that are beyond the control of PROVIDER, such as web brownouts, consolidator/payment processor unscheduled downtime, and scheduled maintenance are not included

Scheduled Maintenance

PROVIDER will schedule all routine system maintenance, hardware and software upgrades, and network changes from 2AM ET to 6AM ET each Sunday. The scheduled maintenance window will not apply towards the Availability Period.

Notice for Changes

PROVIDER will take commercially reasonable efforts to provide 72 hours advance notice for any unscheduled system maintenance.

Response Time

PROVIDER will take commercially reasonable efforts to maintain an internal response time of five(5) seconds or less for all transactions from the time they arrive at the PROVIDER firewall until they are delivered back to the firewall.

Parsing and Presentment

Upon PROVIDER's receipt of the document data from Client, PROVIDER will process and load the customer documents, no later than the time frame mutually agreed to after receipt. All regularly scheduled files received for parsing and presentment will be processed within twenty four (24) hours of receipt by PROVIDER unless otherwise specified and agreed upon with Client. Receipt of the file is identified as the successful completion of the transmission of the file and the relevant return code confirming successful transmission. In the event of exceptionally large, additional, missed, or the reprocessing of files, special arrangements must be made with PROVIDER client support to determine a mutually agreeable schedule for delivery.

E-mail Delivery

E-mail messages will be made available to applicable customers within eight hours of the event that triggers the message. Events that are beyond the control of PROVIDER, such as web brownouts and scheduled maintenance are not included in this time commitment

Payment Processing and Posting

If Client elects to accept ACH payments, PROVIDER shall create (a) a daily ACH file to be electronically transmitted to the designated financial institution on each business day (Monday through Friday, excluding Bank holidays), for the total amount of the transactions processed, in accordance with the terms and conditions set forth herein; and (b) a separate Accounts Receivable file that is consistent with the ACH file and (c) that PROVIDER will post the Accounts Receivable (A/R) file each day on a specified FTP server for Client at a mutually agreed-upon time.

If Client elects to accept Credit / Debit cards, PROVIDER shall authorize those transactions on a real time basis with the chosen credit card processor and provide a nightly settlement file to the credit card processor for verification. The Credit Card Processor will be responsible for depositing the funds to you designated bank account.

Services Level Failures:

Excused Performance Problems

PROVIDER shall not be liable to Client for any failure to meet a Service Level to the extent that such failure is attributable to: (i) a Force Majeure event; or (ii) acts or omissions of Client; or (iii) breaches of the Agreement by Client. The foregoing is referred to herein collectively as an "Excused Performance Problem."

Single Point of Contact

Regardless of whether any failure by PROVIDER to meet a Service Level is attributable to PROVIDER or an Excused Performance Problem, and without limitation on PROVIDER's obligations to address such failure as otherwise specified in this Agreement, PROVIDER shall provide a single point of contact in the form of a toll-free number to address resolution of such failure and shall act promptly to address the problem causing the failure.

Incident Management:

All incidents that occur and affect Client directly and/or indirectly will be managed to resolution by your Support Team with ongoing communication to Client. Resolution of incidents at PROVIDER is facilitated through:

- Provider incident management 7 X 24 based on the severity of the issue defined hereto.
- PROVIDER analysts will track incidents to ensure that they are resolved in a timely manner. Resolution may be in the form of a transfer to the Client's own support service where appropriate.
- Escalation of any incident to PROVIDER management at any time.
- Communication to all necessary parties as detailed in the contact lists agreed with the Client.
- Classification of the severity level of each incident in accordance with PROVIDER's Incident Classification Standard
- Integrity and completeness of Incident records.

Incident Classification Standard

Provider shall use all commercially reasonable efforts to respond to incident reports according to the following schedule:

Incident Classification	Action 1	Action 2	Action 3
Severity Level 1	1 hour	1 business day	15 business days
Severity Level 2	1 hour	1 business day	30 business days
Severity Level 3	1 hour	15 business days	45 business days
Severity Level 4	1 hour	45 business days	as appropriate

Incident Classification Definition

Severity Level 1	<u>Fatal</u> : Errors preventing all useful work from being done as reasonably determined by Client and Provider.
Severity Level 2	<u>Severe Impact</u> : Errors, which disable major functions from being performed as reasonably determined by Client and Provider.
Severity Level 3	<u>Degraded Operations</u> : Errors disabling only certain nonessential functions as reasonably determined by Client and Provider.

Severity Level 4

Minimal Impact: Minor and cosmetic issues as reasonably determined by Client and PROVIDER.

Action Classification

Action 1 Acknowledgement of receipt of reported issue or error

Action 2 Provide patch, workaround, temporary fix and document corrective action

Action 3 Official object code fix, update or major release and/or updated documentation

Incidents are tracked via a work request “ticket” that documents all correspondence through its entire “life cycle”. The ticket is also used to collect vital information for the change management logs which detail all issues and the subsequent adjustments and revisions to the solution in question.

Note: Business days are Monday to Friday, excluding national holidays.

Exhibit D

Memo on documentation regarding additional insured status

[Please see GBSB section 300 for discussion of insurance.]

Memo to: All Departments

From: Finance Department, Risk Management Division

Subject: Changes in Insurance Documentation for all Contracts

Date: April 7, 2000

The City has a general practice of requiring that contractors who do work for the City must carry liability insurance. They also must name the City as additional insured on their general liability insurance policies for purposes of the contract.

In the past, the documentation to show that these requirements have been met has been a single-page form called an insurance certificate. This documentation was prescribed by the insurance industry, and all insurance companies used essentially the same form.

Recently, the insurance industry has changed their procedures for endorsing additional insureds onto policies. Their new procedure necessitates a change in what we accept as documentation that the City actually is an additional insured. The traditional certificate form will remain as evidence of the insurance coverage, but this will no longer suffice to document that the City is an additional insured—even if the certificate so states.

In order to comply with the additional insured requirement, contractors will now need to carry one of two types of additional insured endorsements to the policy:

1. a specific additional insured endorsement to make the City of Durham, NC, an additional insured for purposes of the contract, or
2. a “blanket additional insured” endorsement to cover all companies (including the City) that require additional insured protection.

If a contractor chooses option 1, the specific endorsement, the required documentation for City contracts is:

- a certificate of insurance to document the coverage, plus
- an original of the endorsement to effect the additional insured coverage.

If a contractor uses option 2, the blanket endorsement, the required documentation for City contracts is now:

- a certificate of insurance to document the coverage, plus
- statements by the agent on the certificate of insurance that:
 - the general liability policy includes a blanket additional insured endorsement, and showing the endorsement form number, and
 - the City is an additional insured.

New contract language to cover this requirement will be forthcoming. [*That “new language” language is in APPENDIX K, below. – RW*] In the interim, departments may receive certificates related to current contracts, and those certificates must be brought into compliance with this memo. We recommend that you provide a copy of this memo to the contractor so they can provide it to the agent who issues the certificate.

Departments who would like special instruction in this should contact Ann-Marie Sharpe, Risk Manager, ext. 18348.

Exhibit E

Documentation Of Additional Insured Status On General Liability Policies

Sec. _____. Documentation Of Additional Insured Status On General Liability Policies. The Contractor shall provide proof that the City has been named as an additional insured on the Contractor's general liability insurance policies by providing documentation. The documentation required depends on whether the Contractor chooses option 1 or option 2:

- Option 1: a specific additional insured endorsement to make the City of Durham, N.C., an additional insured for purposes of this particular contract, or
Option 2: a "blanket additional insured" endorsement to cover all companies (including the City) that require additional insured protection.

If the Contractor chooses Option 1 (the specific endorsement), the required documentation is:

- (a) a certificate of insurance to document the coverage, plus
- (b) an original of the endorsement to effect the additional insured coverage.

If the Contractor chooses Option 2 (the blanket endorsement), the required documentation is:

- (a) a certificate of insurance to document the coverage, plus
- (b) statements by the agent on the certificate of insurance that:
 - (i) the general liability policy includes a blanket additional insured endorsement, and showing the endorsement form number, and
 - (ii) the City of Durham, N. C. is an additional insured.